

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARINGS
17.30.660 pertaining to nutrient)	ON PROPOSED AMENDMENT
standards variances)	
)	(WATER QUALITY)

TO: All Concerned Persons

1. On April 10, 2018, at 11:00 a.m., the Department of Environmental Quality (department) will hold a public hearing in Room 111 of the Metcalf Building, 1520 E. Sixth Avenue, Helena, Montana, and a second public hearing at Whitefish City Hall Council Chambers, 418 E. Second St., 2nd Floor, Whitefish, Montana on April 11, 2018, at 11:00 a.m., to consider the proposed amendment of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Sandy Scherer no later than 5:00 p.m., April 3, 2018, to advise us of the nature of the accommodation that you need. Please contact Sandy Scherer at the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail sscherer@mt.gov.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

17.30.660 NUTRIENT STANDARDS VARIANCES (1) A person may apply to the department for a nutrient standards variance at any time following the board's adoption of base numeric nutrient standards. In addition to this rule, variances are subject to the procedures and requirements contained in Department Circular DEQ-12B (~~June 2017~~ May 2018 edition).

(2) An application for a general variance must provide information demonstrating that the wastewater treatment facility meets the requirements of Department Circular DEQ-12B (~~June 2017~~ May 2018 edition). The decision to grant the general variance must be reflected in the permit that is made available for public comment.

(3) remains the same.

(4) The department may approve the adoption of an individual variance that specifies interim effluent limits different from those contained in general variance limits contained in Department Circular DEQ-12B (~~June 2017~~ May 2018 edition), if water quality modeling demonstrates that greater emphasis on the reduction of one nutrient may achieve similar water quality and biological improvements as would the equal reduction of both nitrogen and phosphorus. The variance must provide effluent limits that reflect the lowest effluent concentration that is feasible based on achieving the highest attainable condition for the receiving water. A person shall submit the proposed effluent limits and supporting data in an application for an

individual nutrient variance under (3). A person who has an individual variance with effluent limits that are based on this section shall, in each subsequent triennial review of those limits conducted pursuant to 75-5-313(7), MCA, collect and submit water quality data to demonstrate whether the biological status of the receiving water continues to justify those effluent limits.

(5) through (7) remain the same.

(8) The department adopts and incorporates by reference Department Circular DEQ-12B, entitled "Nutrient Standards Variances" (~~June 2017~~ May 2018 edition), which provides procedures and requirements for nutrient standards variances. Copies of Department Circular DEQ-12B are available at the Department of Environmental Quality, 1520 East 6th Avenue, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-5-201, 75-5-301, MCA

IMP: 75-5-313, MCA

REASON: Department Circular DEQ-12B provides MPDES permit holders with the end-of-pipe treatment requirements their effluent must meet if they are to qualify for a general variance from the state's base numeric nutrient standards (base numeric nutrient standards are found in Circular DEQ-12A). Circular DEQ-12B was updated and re-adopted, with modifications to the end-of-pipe treatment requirements in June 2017. The end-of-pipe treatment requirements in the June 2017 edition of the circular are more stringent than they were in the previous (July 2014) edition. In addition to general variance requirements, Circular DEQ-12B also provides for MPDES permit holders to pursue individual variances which are based on the permittee's particular economic situation. The proposed amendments do not alter any of the general variance requirements. Per this notice, the department is proposing to modify text in the circular pertaining to individual variances. Also, an individual variance for one community, the city of Whitefish (Whitefish), has been requested, and is proposed to be included in Circular DEQ-12B. Changes to the text in the circular pertaining to individual variances are addressed first.

The department submitted the June 2017 version of Circular DEQ-12B to the U.S. Environmental Protection Agency (EPA) for review, and received EPA's action letter on 10/31/2017. In the action letter, EPA took no action on the department's individual variance provisions (which are found in Section 3.0 of Circular DEQ-12B). Since then, EPA has indicated to the department that wording changes to Section 3.0 would provide better alignment between that section's text and the federal variance rules at 40 CFR 131.14. Although the department considers these suggested changes minor in nature and would not alter the basic methods by which the department grants individual variances, the department recognizes the EPA's approval authority for Clean Water Act purposes. Accordingly, wording changes have been made in subsection 3.1 of Circular DEQ-12B and are being proposed in this rulemaking to better accord with language at 40 CFR 131.14, and in particular with terminology at 40 CFR 131.14(b)(1)(ii).

Additional proposed changes to Section 3.0 of the circular include clarification

on HAC (highest attainable condition) requirements for individual variances and the removal of Section 3.2. Section 3.2 addressed a computer modeling method for deriving individual variance treatment requirements. However, upon review, the department found that this section is redundant to existing rule. ARM 17.30.660(4) provides nearly the same level of detail as did Section 3.2 and, further, the department has a guidance document that provides a very high level of detail on the computer modeling method. Because it was redundant and provided no "value added," Section 3.2 would be stricken. Section 3.1 would now contain a sentence which makes clear that ARM 17.30.660(4)'s computer-model based individual variance process is linked to other methods the department uses to develop individual variances.

As noted above, Circular DEQ-12B would also be amended to contain an individual variance for Whitefish that would apply to its proposed new wastewater treatment facility. Whitefish was granted a general nutrient standards variance under the previous (July 2014) edition of Circular DEQ-12B. This general variance applies to its current facility (an aerated lagoon followed by mechanical phosphorus removal and chlorination/de-chlorination). The general variance was implemented in the current MPDES permit issued for Whitefish's wastewater treatment plant, MPDES Permit No. MT0020184. This MPDES permit will expire on 7/31/2020. During the next permit renewal process, the department may no longer implement the 2014 version of the general variance. As a result of planned upgrades to Whitefish's wastewater lagoon and the recent changes to the general variance treatment requirements, Whitefish is now requesting an individual variance.

The department has consulted with Whitefish and has determined that no reasonable alternative to an individual nutrient variance exists. Whitefish has further demonstrated that attaining the base numeric nutrient standards is not feasible and would cause substantial and widespread economic impacts. Individual variances are generally intended for permittees who would have financial difficulties meeting the current general variance treatment requirements, i.e., those in the June 2017 edition of Circular DEQ-12B, and are seeking individual nitrogen and phosphorus permit limits tailored to their specific economic situation. For individual variances, the department has defined an economic evaluation process that it uses to derive the minimum dollar value that should be expended for the purpose of achieving base numeric nutrient standards. This same dollar value is used as the basis for an individual variance. The dollar value is a function of the community's median household income (MHI) and was, in 2017, equal to 1.3 percent of Whitefish's MHI. The wastewater facility Whitefish would prefer to build (sequencing batch reactor—a type of mechanical facility) would cost the community on the order of 2.6 percent MHI, well above the 1.3 percent minimum requirement. However, the new facility would still not allow the city to meet base numeric nutrient standards, nor would it meet the general variance treatment requirements in the June 2017 edition of Circular DEQ-12B. For these reasons, Whitefish is requesting an individual nutrient standards variance for the proposed new facility.

The department has reviewed Whitefish's application for an individual nutrient

standards variance based on building and operating the facility described above and has found that Whitefish's justification for an individual variance is acceptable. The individual variance is planned to be implemented in two phases. In phase I, which is the subject of this amendment, the MPDES permit would be based on the new facility's design treatment specifications of 10 mg TN/L and 1 mg TP/L. Nutrient load limits in the next MPDES permit would then be based upon these treatment specifications. Approximately seven years later, phase II would be implemented. For phase II, the MPDES permit would be based on the actual achieved concentrations (presumably better than 10 mg TN/L and 1 mg TP/L) that have resulted from operational stabilization and optimization. Provided the substantial and widespread economic impact analyses remain unchanged, the phase II variance requirements would not result in the need for a significant increase in user rates.

The department has also determined that, as a component of the variance, Whitefish would be assigned a fixed coefficient of variation (CV; that is, the standard deviation/mean) of 0.6, which would be used when deriving Whitefish's average monthly permit limit. This would allow for expected effluent discharge variability as Whitefish's nutrient discharge concentrations decrease. It is known that the CV of effluent nutrient samples is likely to increase as lower nutrient concentrations are achieved. The fixed CV should alleviate the issue because it institutes a CV that is realistic for the point in time in the future when Whitefish achieves low nutrient concentrations in its effluent.

Individual variances must be adopted into Circular DEQ-12B on a case-by-case basis following the department's formal rulemaking process. This MAR notice is part of that rulemaking process.

A copy of proposed Department Circular DEQ-12B (May 2018) and the technical document containing the Whitefish individual variance application, entitled "City of Whitefish Wastewater Treatment Facilities Individual Variance Request from Numeric Nutrient Standards Substantial and Widespread Economic Impact," may be viewed at the department's website:

<http://deq.mt.gov/Water/WQINFO/nutrientworkgroup>. Copies may also be obtained by contacting Myla Kelly at (406) 444-3639 or MKelly2@mt.gov.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to sscherer@mt.gov, no later than 5:00 p.m., April 13, 2018. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the

person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wind energy bonding, wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Sandy Scherer at sscherer@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

6. Kurt Moser, attorney for the department, has been designated to preside over and conduct the hearings.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ John F. North
JOHN F. NORTH
Rule Reviewer

BY: /s/ Tom Livers
TOM LIVERS
Director

Certified to the Secretary of State, February 13, 2018.